Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)))	CC Docket No. 96-98
	)	
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)))	CC Docket No. 95-185

To: The Commission

REPLY TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION AND CLARIFICATION

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November 12, 1996

SUMMARY

Commercial mobile radio services ("CMRS") providers can be a vital force in opening local telecommunications markets to competition if the unique attributes of the CMRS industry are appropriately recognized. The rules adopted in the *Local Competition Order* are generally sensitive to the jurisdictional and technical differences between CMRS and landline services. However, the incumbent local exchange carriers ("ILECs"), as they have done so many times in the past, continue to urge the Commission to adopt a monopolist's version of competition where CMRS providers are severely hamstrung. As the competitive viability of CMRS would be diminished by the arbitrary imposition of land-based concepts on a wireless industry, the Commission should refuse to step back from the national rules established in the *Local Competition Order*. In addition, the Commission should modify its rules to remedy problems created by anticompetitive LEC-to-CMRS interconnection arrangements.

Because the *Local Competition Order* recognized the anticompetitive and illegal nature of currently one-sided and non-cost based LEC-to-CMRS interconnection arrangements, the Commission must also take the explicit step of extending interim pricing relief afforded to new entrants to cellular carriers as well. Existing rules unfairly hold cellular licensees to unconscionable interconnection contracts for a potentially extended period of time, thereby providing incumbent LECs significant incentives to further delay renegotiation. Immediate reform of unlawful ILEC-cellular interconnection contracts is central to the pro-competitive purposes of the 1996 Act and other provisions of the Communications Act, and must take place without delay.

The Commission must also clarify its definition of a wireless local calling area to allow cellular operators with multiple market systems to define their local calling areas based on adjacent MSAs or RSAs within their contiguous footprint of operation. The FCC should also allow cellular carriers to develop their own rating point system for end user local and toll charges. No party has explained why cellular carriers should be disadvantaged as compared with PCS providers in establishing their local calling areas, and no principled basis exists for allowing any party except a CMRS provider to choose where a CMRS provider's NXX codes are to be located.

In light of the uncertainty cast over the *Local Competition Order* because of the Eighth Circuit stay, the Commission should remove regulatory uncertainty from the CMRS industry and assert its independent jurisdiction over LEC-to-CMRS interconnection under Section 332. The Commission's Section 332 jurisdiction provides an independent basis apart from the 1996 Act for the Commission's determinations in the *Local Competition Order* as they pertain to CMRS. Accordingly, the Commission need not and should not wait to resolve interconnection issues vital to the success of the CMRS industry until the ultimate conclusion of the Eighth Circuit litigation.

Other necessary modifications to the *Local Competition Order* include a clarification that symmetrical compensation means that ILEC-cellular transport and termination rates reflect the full functionality of cellular networks, a prohibition on ILECs from introducing separate or additional interconnection charges when a cellular carrier requests only transport and termination functions, and a requirement that all Class A ILECs file all existing interconnection contracts with the appropriate state commissions before the end of the year.

Finally, the Commission should encourage states to adopt a bill and keep presumption based on projected traffic patterns so that the cellular industry can benefit from the advantages of bill and keep once the Commission's new pro-competitive rules in areas such as interconnection and number portability are in place.

Adoption of these modifications will help maximize the potential of advanced cellular networks, and will promote Congress's pro-competitive vision in passing the 1996 Act (and, for that matter, the 1993 Budget Act). Adoption of the ILEC proposals, however, would thwart the continued growth of the independent cellular industry. The Joint Parties urge the Commission to retain its strong, national rules for CMRS, while adopting the Joint Parties' proposed modifications.

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Comcast Cellular Communications, Inc. ("Comcast Cellular") and Vanguard Cellular Systems, Inc. ("Vanguard Cellular") (or collectively, the "Joint Parties"), by their attorneys, hereby submit their reply to several oppositions to petitions for reconsideration and clarification filed on the Commission's *Local Competition Order*.[1/] The oppositions filed by incumbent local exchange carriers ("ILECs") demonstrate yet again the ILEC fear that the *Local Competition Order*, with appropriate clarifications, could succeed in opening the local telecommunications market to competition. These ILEC oppositions must be recognized as last ditch attempts by monopolists to prevent their market power from slipping away. For the reasons discussed below, Comcast Cellular and Vanguard Cellular urge the Commission to reject these ILEC attempts, and to reconsider or clarify the rules discussed herein.

1/ *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185 (released August 8, 1996) ("*Local Competition Order*").

I. INTRODUCTION

Over three years ago in the 1993 Budget Act, Congress established a national regulatory scheme for commercial mobile radio service ("CMRS") providers.[2] The *Local Competition Order,* with the clarifications proposed by the Joint Parties, recognizes the unique attributes of CMRS, and adopts a regulatory regime under which CMRS can potentially compete head-to-head with ILEC wireline providers. The ILECs, however, as they have done so many times in the past, steadfastly refuse to acknowledge the Commission's exclusive jurisdiction over CMRS issues. Instead, in a transparent attempt to limit the competitive viability of CMRS providers, they ask the Commission to ignore the statutory and technical differences between wireless and wireline services.[3]

To fully realize the goals of the 1993 Budget Act and the 1996 Act[4] the Commission must modify or clarify specific aspects of its interconnection framework to remedy problems created by anticompetitive LEC-to-CMRS interconnection arrangements. As the *Local Competition Order* recognized the anticompetitive and illegal nature of current one-sided and non-cost based LEC-to-CMRS interconnection arrangements, the Commission must take the explicit step of extending interim pricing relief to cellular carriers. The Commission must

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2/ *See* Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, 107 Stat. 312, 392 ("1993 Budget Act"). Under the provisions of the 1993 Budget Act that were entirely undisturbed by the 1996 Act, states can reassert jurisdiction over CMRS rates and interconnection only when they can demonstrate to the FCC's satisfaction that CMRS is functioning as a replacement to a "substantial portion of the wireline telephone exchange service within any state."

3/ *See, e.g., infra* Section III and Section IV(A).

4/ Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 ("1996 Act").

also amend its definition of a local calling area to allow cellular operators with multicellular systems in multiple MSAs or RSAs the flexibility to define their local calling areas based on the contiguous footprint of wireless operations in adjacent markets and existing network architectures, as well as allow cellular carriers to develop their own rating point system to define end user local and toll charges. Other necessary modifications include a clarification that symmetrical compensation means that ILEC-cellular transport and termination rates reflect the full functionality of cellular networks, a prohibition on ILECs from introducing separate or additional interconnection charges under Section 251(c)(2) when a cellular carrier requests only transport and termination functions under Section 251(b)(5), and a requirement that all Class A ILECs file all existing interconnection contracts with the appropriate state commissions before the end of the year.

Finally, the Commission should encourage states to adopt a bill and keep presumption based on projected traffic patterns, and should assert its independent jurisdiction over LEC-to-CMRS interconnection under Section 332. Adoption of these modifications will help maximize the potential of advanced cellular networks, and will promote Congress's pro-competitive vision in passing the 1996 Act and the 1993 Budget Act.

Typically, the ILEC oppositions refuse to acknowledge the significance and scope of the Commission's action finding that existing LEC-to-CMRS arrangements violate both pre-existing and new rules. Instead, the ILECs continue to argue for rule modifications that would severely curtail the ability of CMRS providers to serve their customers in an economically efficient manner. The ILECs cannot close the door on the new competitive era and succeed in treating competitors like end user customers. Adoption of the necessary clarifications and modifications recommended by the Joint Parties in their Petition will go a long way towards achieving just, reasonable and nondiscriminatory interconnection that is necessary to maximize the potential of advanced cellular networks.

II. PROMPT ACTION SHOULD BE TAKEN TO PROVIDE CELLULAR CARRIERS WITH INTERIM RELIEF FROM UNLAWFUL CONTRACTS.

A. Cellular Carriers Are Entitled to Interim Rate Relief for Unlawful ILEC-to-Cellular Interconnection Contracts.

Only the United States Telephone Association ("USTA") opposes the Joint Parties' request that the Commission reconsider the interim compensation arrangements for CMRS providers operating under existing contracts. USTA argues that there has been no finding that existing contracts are unlawful and that the interim relief requested by the Joint Parties "would wholly ignore the facts surrounding existing interconnection arrangements."[5] These claims are incorrect. It is USTA that "wholly ignores the facts."

First, the Commission has made a finding that current CMRS interconnection agreements are unlawful:

> Section 20.11 of our rules, which predates enactment of the 1996 Act, requires that interconnection agreements between incumbent LECs and CMRS providers comply with the principles of mutual compensation, and that each carrier pay reasonable compensation for transport and termination of the other carriers calls. Based on the extensive record in the *LEC-CMRS Interconnection* proceeding, we conclude that, in many cases, incumbent LECs appear to have imposed arrangements that provide little or no compensation for calls terminated on wireless networks, and in some cases imposed charges for traffic originated on CMRS providers' networks, both in violation of section 20.11 of our rules.

5/ USTA Opposition at 41.

Local Competition Order at ¶ 1094 (footnotes omitted). This finding demonstrates that ILECs have and continue to impose unlawful terms and conditions on CMRS providers. Nevertheless, USTA persists in the fantasy that current LEC-to-CMRS interconnection contracts were arrived at after a fair and equitable negotiation process between parties with equal bargaining power. Nothing could be further from the truth. ILEC abuses of CMRS competitors have been documented in the Commission's rulemaking on safeguards for LEC in-region CMRS,[6/] and the Commission itself has stated that "our existing LEC/CMRS interconnection rules and policies are insufficient to protect against discriminatory interconnection practices and rates."[7/] Further, in their Opposition the Joint Parties have supplied the Commission with a declaration as to the unlawfulness of Comcast Cellular's current interconnection agreements with Bell Atlantic.[8/]

At the same time, no basis exists for failing to provide relief to a party continuing to receive interconnection pursuant to an illegal contract during the period when the illegal

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6/ *See, e.g., Notice of Proposed Rulemaking*, Order on Remand, and Waiver Order, WT Docket No. 96-162, GEN Docket No. 90-314, FCC 96-319 (released August 13, 1996) ("*CMRS Safeguards Notice*"); Radiofone Comments on the *CMRS Safeguards Notice* at 2 (describing BellSouth's refusal to provide a Radiofone affiliate with roaming capability that was only remedied by direct FCC intervention, BellSouth's predatory pricing directed at Radiofone, and discriminatory charges assessed against Radiofone in BellSouth's provision of roaming service); Public Utilities Commission of Ohio Comments on the *CMRS Safeguards Notice* at 5 (describing a complaint filed in Ohio by a cellular reseller alleging that LECs are favoring their affiliated cellular retailers and engaging in anti-competitive "price squeeze" activity); Comcast Cellular Reply Comments on the *CMRS Safeguards Notice* at 3-5 (describing Bell Atlantic's anti-competitive conduct that favored its pre-merger cellular affiliate, Bell Atlantic Mobile Services ("BAMS") and Bell Atlantic's abusive behavior in failing to negotiate in good faith and provide suitable interconnection arrangements to a Comcast subsidiary).

7/ *CMRS Safeguards Notice* at ¶ 34.

8/ Opposition of the Joint Parties at Exhibit C, Declaration of Jeffrey E. Smith.

contract is being renegotiated. As parties directly harmed by unlawful contract provisions, the Joint Parties should be afforded the same interim pricing relief the Commission has made available in other circumstances to other telecommunications carriers.[9] Failure to explicitly provide interim relief as to the costs for transport and termination will only give ILECs additional incentives to stall negotiations and arbitrations, and will place cellular carriers at a serious disadvantage vis-a-vis other requesting telecommunications carriers who will receive such immediate interim relief.

Accordingly, the Commission should modify its rules to provide that cellular licensees are entitled to the same interim pricing relief accorded all other requesting telecommunications carriers under the 1996 Act. The Commission must amend its interim pricing rule to exclude only those requesting telecommunications carriers with existing contracts that have not been abrogated in whole or in part by the Commission and that otherwise comply with the Commission's Section 251 rules and policies.

B. ILECs Should Be Required to File Existing Interconnection Agreements Promptly.

No party argued against the Joint Parties' request that all Class A carriers be required to file all of their agreements with other ILECs with State commissions before the end of the year, with the States reviewing those agreements on any reasonable schedule. Prompt access to existing interconnection contracts, as the Joint Parties explained in their Petition, will prevent ILEC attempts to game the Section 252 negotiation process by delaying the filing of

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9/ *See, e.g.*, Petition of the Joint Parties at 5 n.5.

any "sweetheart deals" that otherwise would be required to be made available to all other requesting telecommunications carriers on the same rates, terms and conditions.[10/]

The mere act of filing will impose no meaningful burden on the states or on ILECs, and should help, as AirTouch notes, level the bargaining power of parties to Section 252 negotiations.[11/] The information contained in existing agreements is highly relevant to those carriers seeking interconnection through the negotiation and arbitration process. Thus, the Commission should require that existing Class A ILEC agreements be filed with the states before the end of the year.

III. THE COMMISSION HAS JURISDICTION OVER CMRS RATES AND ENTRY.

A. CMRS Local Calling Scope Is a Federal Issue.

The Joint Parties and other petitioners sought clarification of two issues central to the definition of CMRS local calling scopes: (1) that cellular carriers should be able to conform local calling areas to their consolidated MSA or RSA boundaries; and (2) that CMRS providers should have the ability to determine the rating points for their NXX codes.[12/] While ILECs attack these requests for clarification, there is no basis for denying them.

Initially, it is plain that CMRS is a federally licensed radio service and that the FCC has jurisdiction over CMRS rates and entry under Section 332.[13/] As a corollary, the

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10/ Petition of the Joint Parties at 19.

11/ AirTouch Opposition at 4.

12/ Petition of the Joint Parties at 8-14.

13/ *See* 47 U.S.C. § 332(c)(3) ("Notwithstanding sections 2(b) and 221(b), no State (continued...)

Commission must recognize that the scope of a CMRS carrier's local calling area and a CMRS carrier's ability to associate NXX codes with particular points directly affect CMRS rates, and consequently are exclusively federal matters.

USTA and the other ILECs continue to assert that MTA-wide (or for that matter MSA/RSA regional) CMRS local calling areas are "discriminatory" as to other new entrants, and USTA asks that CMRS calling scopes be changed to be consistent with ILEC landline customer local calling areas.[14/] Nothing would be more discriminatory than to modify Commission rules as USTA requests. As AT&T properly points out, because of differences in technology and because CMRS providers operate under federally-issued licenses that encompass wide geographic areas, CMRS service areas have rarely, if ever, tracked wireline local exchange boundaries.[15/] Mobile telephony has not developed under the same conditions as landline service, and it would be entirely antithetical to pre-1996 Act FCC policy to circumscribe the wide area nature of CMRS calling.[16/] Moreover, the ILECs present no

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13/ (...continued)
or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service [provider] . . . .").

14/ *See, e.g.,* USTA Opposition at 39; U S West Opposition at 17; Bell Atlantic Opposition at 10.

15/ AT&T Opposition at 41.

16/ For example, for almost a decade the FCC has deemed CMRS providers to be co-carriers entitled to mutual and reciprocal compensation for the use of their network facilities outside of the access charge regime. *See, e.g., The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, Declaratory Ruling, 2 FCC Rcd 2910, 2915-16 (1987). The ILECs present no basis for changing such a long-standing policy now.

support for their claims that a recognition of the natural scope of a CMRS network will result in any "competitive imbalance."[17]

Rather, as the Cellular Telecommunications Industry Association ("CTIA") explains, grant of the USTA request would negate the efficiencies of the wide-area licensing plans developed by the Commission for CMRS.[18] The MTA licensing scheme is based on patterns of trade rather than on state lines, and CMRS customers are accustomed to the mobility and the advantages wide calling areas provide. The continuing development of cellular service demonstrates that efficient buildout of wireless networks requires "clustering" of systems into regional areas, and wide local calling scopes are standard in the CMRS industry. In determining what geographic area constitutes a local calling area for CMRS providers, the Commission appropriately attempted to adapt preexisting CMRS practice to the new regulatory framework.[19] Artificially limiting the scope of a CMRS provider's local calling area to the same parameters as incumbent landline carriers or requiring the payment of access charges for reciprocal transport and termination based over the area the CMRS provider treats as local would inhibit the natural growth of the CMRS industry, giving consumer fewer service choices and leading to higher prices.

For the same reasons, the Joint Parties' request that the Commission modify its MTA local calling area to accommodate the differences in FCC licensing of cellular MSAs and

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17/ USTA Opposition at 39. Indeed, the very nature of CMRS makes the imposition of ILEC landline customer local calling areas entirely inappropriate.

18/ CTIA Opposition at 8-10.

19/ AT&T Opposition at 41.

RSAs.[20] No party has explained why cellular carriers should be disadvantaged as compared with personal communications service ("PCS") providers, whose license areas will be designed using MTA boundaries. Cellular carriers with multiple market systems should be permitted to define their local calling areas based on adjacent MSAs and RSAs within their contiguous footprint of operation. For example, the boundary between the Philadelphia and New York MTAs runs right through the center of Vanguard Cellular's Pennsylvania Supersystem, and adoption of an MTA-based local calling scheme would, as the Joint Parties explained in their Petition, create improper results.[21] Granting the Joint Parties' request would not, as USTA falsely asserts, give CMRS providers "substantial control over determining the jurisdictional status of wireless calls."[22] As described above, the jurisdictional status of wireless calls was set three years ago by Congress and jurisdiction rests with the Commission, not with the States.

The Commission also should grant the Joint Parties' request to adopt a rule that, consistent with Section 51.701, allows CMRS providers to control the assignment of NXX codes to rating points for purposes of determining when a local, as opposed to an access charge, applies to calls to a CMRS customer. ILECs have always decided where their facilities and, consequently, NXX codes are located. CMRS providers are only asking for the same ability to run their businesses that the ILECs have always enjoyed. There is no

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20/ Petition of the Joint Parties at 8-10.

21/ Petition of the Joint Parties at 10 n.10.

22/ USTA Opposition at 39.

principled basis for allowing ILECs (or the States) to choose where a CMRS provider's NXX codes are to be located.

USTA claims that grant of the Joint Parties' request would "somehow grant to CMRS providers the ability to control a LEC's retail pricing decisions, as well as the ability to preempt intrastate rate matters wholly within the jurisdiction of state commissions."[23/] This is not the case. Under the Joint Parties' proposal, each CMRS NXX code would continue to be associated with a single location. ILECs and other carriers would continue to be able to rate calls, according to their existing rating plans, based on the assigned location for each CMRS NXX code. The only difference from current practices would be that the CMRS provider would be permitted to determine that one NXX code should, for instance, be associated with Manassas, Virginia, while another is associated with Alexandria, instead of having all of its NXX codes associated with an Alexandria location.

Moreover, adopting the Joint Parties' proposal is necessary to permit CMRS providers to compete effectively with ILECs. CMRS switching facilities typically cover much wider areas than ILEC local calling areas. Consequently, if CMRS providers are forced to associate NXX codes with only the locations of their own facilities, then calls to CMRS customers will be "local" only to those landline callers located in the same landline local calling area as the CMRS facilities. Calls that, in fact, are from one house to the next could be billed under access charges as toll calls by the landline carrier. When the landline

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23/ USTA Opposition at 40. Interestingly, USTA limits its objection to provider decisions on NXX code locations to the CMRS industry and does not, apparently, object if land-based carriers determining where their NXX codes are located. Other parties with some land-based interests, such as Cox, had proposals similar to the proposal of the Joint Parties, yet USTA objects only to the Joint Parties.

customer receives her bill with toll charges for calls to "local" CMRS customers, that landline customer is likely to be deterred from calling any CMRS number. The only beneficiary of this scenario is the local ILEC, which reaps unearned toll revenues and simultaneously benefits from the anticompetitive effects of preventing CMRS providers from assigning appropriate locations to their NXX codes. Presumably, this is why USTA asks the Commission to ignore both the nature of the CMRS industry and the Commission's plain jurisdiction over both telephone numbering and CMRS providers by denying the Joint Parties' request.

B. Because of the Continuing "Confusion" Over CMRS Jurisdiction, the Commission Should Clarify Its Exclusive Jurisdiction Over LEC-to-CMRS Interconnection.

In their attempts to muddle the issues and obtain favor with State regulators, the ILECs continue to assert that the States have jurisdiction in areas they do not. The Commission's exclusive jurisdiction over LEC-to-CMRS interconnection under Section 332 of the 1993 Budget Act has been demonstrated by many parties both in this proceeding and in others, yet the ILECs still try to intimidate the Commission with misleading assertions into backing away from its responsibility to oversee CMRS interconnection.[24/] To minimize

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24/ USTA, for example, states that adoption of an MTA-based structure for CMRS providers' local calling areas "will cause detrimental shifts of revenues and costs from the interstate to the intrastate jurisdiction." USTA Opposition at 40. Such "scare tactics" do not belong in a public policy debate. While no current FCC rule or policy requires ILECs to allocate CMRS interconnection fees to one jurisdiction or another, the FCC retains its authority to make a jurisdictional allocation regarding those fees. To the extent that any FCC decision differs from current ILEC corporate decisions to put them in one area or another, the ILECs have no basis for complaint. This "shifting revenues" argument that has been showing up in recent FCC ILEC filings is nothing more than the latest ILEC attempt to drive a wedge between the FCC and the states. *See, e.g.*, Petition of the Local Exchange

(continued...)

future distractions, the Commission should fully acknowledge the extent of its CMRS jurisdiction over CMRS interconnection and rely on that jurisdiction directly as an independent basis for its determinations in the *Local Competition Order.*[25]

The Joint Parties will not restate here the arguments they have made before on this issue. Significantly, however, the ILECs continue to waste the Commission's time with arguments such as Bell Atlantic's that Section 332 should be read in an absurdly narrow fashion to limit the Commission's authority to one small aspect of CMRS service.[26] Congress would not have restricted the Commission's ability to oversee an industry by allowing it to regulate rates only one-way over a two-way path. The Commission, to promote regulatory certainty, should assert its exclusive jurisdiction over LEC-to-CMRS interconnection under Section 332.

24/ (...continued)
Carrier Coalition for Reconsideration and Clarification at 17. The Commission should put a stop to this harmful rhetoric now by asserting its jurisdiction under Section 332.

25/ *See, e.g.,* Paging Network Inc. Opposition at 15-22; The Personal Communications Industry Association ("PCIA") Opposition at 8-12; AirTouch Opposition at 17-20.

26/ *See* Bell Atlantic Opposition at 12 (arguing that Section 332 "merely limits the power of the states to 'regulate the entry of or the rates charged by any commercial mobile service' . . . It does not extend to the rates that CMRS providers pay to the local exchange carriers for interconnection. In fact, the Commission itself recently held that state 'regulation of the interconnection rates charge[d] by landline telephone companies to CMRS providers . . . does not appear to be circumscribed in any way by Section 332(c)(3).'") (emphasis in original, citations omitted). PCIA, anticipating Bell Atlantic's infirm argument, explains why Bell Atlantic is wrong. PCIA Opposition at 8-9 and n.30. ILEC arguments that states retain authority over the reciprocal ILEC interconnection charge to the CMRS provider but that the FCC has authority over the CMRS reciprocal charge to the ILEC for interconnection is patently absurd.

Moreover, the Commission need not, as some ILECs might argue, wait to assert its jurisdiction over CMRS issues until the appeal before the Eighth Circuit is resolved.[27] On the contrary, as the Eighth Circuit itself implicitly acknowledged by modifying the stay of the *Local Competition Order,* the Commission has had authority over both interstate and intrastate LEC-to-CMRS interconnection since the 1993 Budget Act. This jurisdiction was left unchanged by the 1996 Act.

Resolution of the CMRS jurisdiction issue is in the public interest because it will allow CMRS providers, finally, to get on with their business of developing the nationwide, seamless, wireless network Congress envisioned when it passed the 1993 Budget Act. The 1996 Act did nothing to alter the federal regulatory scheme governing CMRS that was established by Congress over three years ago. The Commission must stand firm against ILEC attempts to weaken the CMRS industry and assert its Section 332 jurisdiction as an independent basis for establishing rules for CMRS.

C. If the Commission Allows the States to Go Forward, It Should Reconsider Its Bill and Keep Presumption.

If the Commission declines to exercise its exclusive jurisdiction over CMRS under Section 332, it should reconsider the bill and keep presumption adopted in the *Local Competition Order* to allow states to justify a bill and keep presumption based on projected traffic and demand patterns.[28] No party opposed the Joint Parties' suggestion that the

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27/ *See, e.g.*, Southern New England Telephone Company Opposition at 4 ("administrative efficiency calls for the FCC to place on the back burner all proposals for revising the First Order . . . .").

28/ 47 C.F.R. § 51.713(c).

current rule improperly limits the use of projected traffic and demand patterns to justify a bill and keep presumption, and no party disputed that the current rule effectively makes the bill and keep presumption unavailable to cellular providers. The Commission's recognition in the *Local Competition Order* that current interconnection agreements improperly deny CMRS providers mutual compensation is itself sufficient basis for a finding that historical calling patterns are not indicative of projected traffic and demand patterns for the cellular industry. Additionally, as noted by NCTA and ALTS, the current lack of true number portability has retarded the growth of balanced traffic.[29] No legal or policy basis exists for preventing the States from looking forward when establishing interconnection rules. The Commission should allow the States to justify a bill and keep presumption based on projected traffic and demand patterns.

IV. INTERCONNECTION PRICING RULES MUST BE TECHNOLOGY AND SERVICE NEUTRAL.

A. Tandem and End Office Functionalities in the CMRS Network Should Be Reflected in Symmetrical Compensation Arrangements.

The Joint Parties' Petition requested clarification that symmetrical compensation means that ILEC-cellular transport and termination rates reflect the full functionality of cellular networks. Symmetrical compensation requires that a tandem-to-tandem charge apply when cellular networks interconnect with an ILEC at the tandem switch because cellular networks provide transport functions between cells and the mobile telephone switching office. The Commission's rules should not promote economically unsound, anticompetitive and

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29/ Association for Local Telecommunications Services ("ALTS") Opposition at 13, citing the National Cable Television Association ("NCTA") Petition at 3.

outdated notions of network architecture, yet the ILECs, in their quest to retard competition, ask the Commission to limit the rights of new entrants when new entrant networks quite naturally do not mimic traditional LEC network architecture. Rather than addressing the issue raised by the Joint Parties and others of how CMRS and ILEC switch functionality differs, the ILEC follow their usual pattern and claim "discrimination" whenever any party proposes a new and better idea.[30/]

There can be no question that if ILEC networks were created today they would utilize far more efficient technologies such as that used by the CMRS or competitive local exchange carrier ("CLEC") industries.[31/] The ILEC oppositions, however, refuse to acknowledge that technology improves, that the many-layered architecture used in ILEC networks often is unnecessary, and, consequently, that new market entrants and CMRS providers efficiently use much "flatter" architectures than ILECs. The Commission, consistent with basic efficiency principles, recognized in the *Local Competition Order* that symmetrical pricing maintains incentives to lower costs while eliminating anti-competitive ILEC incentives.[32/] The ILECs, however, determined to maintain "proper costing principles,"[33/] without regard for economic efficiency ask the Commission to take a step backwards and demand payment for discrete pieces of equipment rather than focusing on its functionality. As Sprint

30/ *See, e.g.*, Bell Atlantic Opposition at 10 ("Some petitioners urge the Commission to modify its reciprocal compensation rules in ways that are designed to provide them with an artificial advantage over the incumbent and other local interconnectors alike.").

31/ *See* Cox Opposition at 3.

32/ *Local Competition Order* at ¶ 1087.

33/ U S West Opposition at 18.

Spectrum recognized, "permitting LECs to obtain asymmetrical compensation because the LECs have outmoded network architecture would be perverse indeed."[34] Indeed, granting the ILEC requests to limit their obligations for symmetrical compensation would do nothing more than reward inefficiency.

The Commission's approach of using ILEC costs as a presumptive proxy for CMRS and new entrants levels the playing field and fosters equitable and cost-based interconnection agreements. The key question in determining appropriate compensation flowing to a CMRS provider should, however, be the functionality provided by a switch and related network. Many parties support the concept of symmetrical compensation based on functionality and recognize the competitive efficiencies such a rule would provide.[35] Consequently, the Commission should clarify that ILECs cannot provide asymmetrical transport and termination rates based on the technological nature of the ILEC network, and reject ILEC attempts to deny competitors truly reciprocal compensation.

B. CMRS Providers Seeking Only Transport and Termination Arrangements Should Be Charged Only for Transport and Termination.

The Joint Parties' request that Section 51.703(b) be amended to provide that ILECs are prohibited from assessing any charge in addition to the reciprocal compensation arrangement with respect to carriers who request only transport and termination under Section 251(b)(5) was not specifically opposed.[36] The Commission must clarify that ILECs

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34/ Sprint Spectrum Opposition at 6.

35/ *See, e.g.,* Sprint Spectrum Opposition at 4-6; Cox Opposition at 3-4.

36/ U S West mentions the Joint Parties' request in a litany of purported "unfair and arbitrary" proposals by the CMRS industry, but fails to provide any reasons why the request (continued...)

may not introduce separate or additional interconnection charges under Section 251(c)(2) when a cellular carrier requests only transport and termination functions under Section 251(b)(5), and the Commission must specify that these two different statutory sections are distinct and not additive. Allowing ILECs to recover profits unrelated to network costs, as could result absent such an amendment, would result in an uneconomically high transport and termination rate for a CMRS provider. Such an outcome would be contrary to the requirements of the 1996 Act. This clarification would ensure that the Commission's rules remain true to Congress's statutory purpose and should therefore be adopted. If, however, the Commission declines to amend its rules as the Joint Parties propose, it must at the very least require that any such charges be reciprocal between the ILEC and CMRS provider.

36/ (...continued)
should not be granted. U S West Opposition at 17.

V. CONCLUSION

For the reasons stated above, Comcast Cellular Communications, Inc. and Vanguard Cellular Systems, Inc. urge the Commission to rebuff attempts to weaken the *Local Competition Order*, and ask the Commission to reconsider or clarify the rules specified herein.

Respectfully submitted,

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November 12, 1996

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of November, 1996, the foregoing "Reply to Oppositions to Petitions for Reconsideration and Clarification" was sent via U.S. first class mail, postage prepaid, or via hand delivery where indicated, to the following:

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